

## **REMARKS/ARGUMENTS**

Claims 3-18 and 21-35 are currently pending. Claims 1-2 and 19-20 have been cancelled. Claims 3-4, 6-10, 13-14, 16, and 21-23 have been amended. Claims 4, 13, 16, and 22 have been amended to correct claim number references. Claims 6, 9, 13, 14, 21, and 23 has been amended for grammatical corrections. Claims 24-35 are new. All amendments and new claims are supported by the specification as originally filed and by the claims as previously filed. New claims 24 and 30 are supported by, e.g., paragraph 9 of the specification. New claims 25-29 and 31-35 are supported by, e.g., the original language of claims 9-13, respectively. No new matter is introduced by this Response, and thus entry thereof is respectfully requested.

### **I. Claim Objections**

Claim 20 has been objected to under 37 CFR §1.75(c) as, allegedly, in an improper dependent form for failing to further limit the subject matter of a previous claim. Claim 20 has been cancelled. Therefore, this objection is moot.

### **II. Rejection Under 35 U.S.C. §112**

Claim 16 has been rejected for insufficient antecedent basis for “the plunger housing.” Claim 16 has been amended to depend on claim 15, which provides proper antecedent basis.

Claim 22 has been rejected for insufficient antecedent basis for “the plunger housing.” Claim 22 has been amended to depend on claim 4, which provides proper antecedent basis. Applicants respectfully request withdrawal of these rejections.

### **III. Rejection Under 35 U.S.C. §102**

Claims 1, 2, 4-6, 14-18 and 22-23 are rejected under 35 U.S.C. §102(b) as, allegedly, being anticipated by Guirguis et al., U.S. Patent No. 6,277,646 (Guirguis ‘646).

Claim 1 as previously presented requires “wherein the plunger is configured to move from the first position toward the second position upon insertion of a test element to break the seal member...” This element is missing in Guirguis ‘646. In particular, the plunger in the Guirguis device is configured to move upon the action of a cap and not a test element. As such, the device of claim 1 as previously presented is structurally distinct from the cited device of Guirguis ‘646.

However, in the interest of expediting prosecution but not conceding to the rejection, Applicants hereby opt to amend claim 3 to incorporate the limitations of claim 1. In the Action of June 27, 2008, the Examiner has stated that claim 3 would be allowable if rewritten in independent form. Accordingly, this rejection is overcome.

Similarly, the Examiner has noted that claims 7-8, 19, and 21 would be allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims. In order to advance the case to allowance while preserving the rights to pursue the rejected aspects in one or more continuation cases, Applicants hereby opt to amend claims 7-8, 19 and 21 as follows.

Claim 7 has been amended to incorporate the elements of the base claim 1.

Claim 8 has been amended to incorporate the elements of the base claim 1 and intervening claims 2 and 4.

Instead of amending claim 19 to incorporate the limitations of claim 14, claim 14 has been amended to incorporate all elements of claim 19. Accordingly, claim 19 has been cancelled to avoid redundancy.

Claim 21 depends on claim 3, which has been rewritten in independent form.

In view of the amendments made herein, claims 3, 7-8, 14 and 21 are allowable, so are the claims depending therefrom including claims 4-6, 9-13, 15-18, 22-29. Consistent with *Ochiai* and *Brouwer*, Applicants hereby request rejoining of claims 9-13, upon allowance of claim 3.

Applicants have submitted new claim 30, which includes the limitations of claim 1 and positively recites a test element comprised therein. The device of claim 30 is novel and not obvious in view of the cited art of records. As noted above, Guirguis '646 describes the use of a cap in the device to push the plunger from a first position to a second position to break a seal member. Nowhere in Guirguis '646 teaches or even suggests using the test element itself to push the plunger from one position to another to effect breaking the seal member. Applicants respectfully submit that new claim 30 and its dependents do not require a new search as the claimed aspects are included in the previously presented claim 1. Allowance of the new claims 30-35 is respectfully requested.

**CONCLUSION**

Applicants submit that this paper fully addresses the Final Office Action mailed June 27, 2008. This application is in condition of allowance. Should the Examiner have any questions, the Examiner is encouraged to contact the undersigned attorney at (650) 849-3383. The Commissioner is authorized to charge any additional fees which may be required, including petition fees and extension of time fees, to Deposit Account No. 23-2415 (Docket No. 32209-728.201).

Respectfully submitted,

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By: 

Karen K. Wong, Ph.D., J.D.  
Reg. No. 44,409

WILSON SONSINI GOODRICH & ROSATI  
650 Page Mill Road  
Palo Alto, CA 94304  
(650) 849-3383  
Customer No. 80984